

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

PAPER, ALLIED INDUSTRIAL,
CHEMICAL & ENERGY WORKERS
INTERNATIONAL UNION, AFL-CIO
(GEORGIA PACIFIC CORPORATION)

and

15-CB-5097

VALDA BARRINEAU, an Individual

PAPER, ALLIED INDUSTRIAL,
CHEMICAL & ENERGY WORKERS,
AFL-CIO, LOCAL UNION NO. 3-0950
(GEORGIA PACIFIC CORPORATION)

and

15-CB-5140

VALDA BARRINEAU, an Individual

Charles R. Rogers, Esq., for the Government.¹

Cecil Gardner, Esq., Mary E. Olsen Esq.,

M. Vance McCrary, Esq., for the Unions.²

BENCH DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. This is an alleged failure to fairly represent case against both the International and Local Union. These cases were heard in trial in Butler, Alabama, on January 21 and 22, 2004. Specifically the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (complaint) alleges the International and Local Union, have refused, since on or about April 22, 2003, to process a grievance concerning seniority rights which the Local Union filed on behalf of Charging Party Valda Barrineau, an Individual, (Barrineau) under the provisions of a collective-bargaining agreement between the Unions and Georgia Pacific Corporation at

¹ I shall refer to Counsel for General Counsel as the Government.

² I shall refer to the Respondents as the Unions.

its Pennington, Alabama location. It is alleged the Unions refused to process the grievance in question because; Barrineau is not a member of the Local Union; to benefit an officer of the Local Union; and, to avoid displacing members of the Local Union. It is alleged the reasons for the Unions' refusal to process the grievance are unfair, arbitrary, invidious and breach the fiduciary duty the Unions owe to the unit employees, and as such violates Section 8(b)(1)(A) of the National Labor Relations Act, as amended (Act). All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses. At the close of the trial and after oral argument by Government and Union counsel, I issued a Bench Decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's (Board) Rules and Regulations setting forth findings of fact and conclusions of law.

For the reasons (including credibility determinations) stated by me on the record at close of the trial, I found the credible evidence did not demonstrate the Unions failed to fairly represent Barrineau in the handling of her grievance concerning seniority rights. I concluded, actions taken by the Unions, including their discussions about, and the Local Union's Executive Board vote on, Barrineau's grievance, did not establish any unlawful motivation by the Unions in their actions toward Barrineau.

I certify the accuracy of the portion of the transcript, as corrected,³ pages 247 to 272, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

Conclusions of Law

Georgia Pacific Corporation is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

Paper, Allied Industrial, Chemical & Energy Workers International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

Paper, Allied Industrial, Chemical & Energy Workers AFL-CIO, Local Union No. 3-0950 is a labor organization within the meaning of Section 2(5) of the Act.

Neither the International nor the Local Union has violated the Act in any manner set forth in the complaint.

ORDER⁴

The unfair labor practice complaint is dismissed.

³ I have corrected the transcript pages containing my Bench Decision and the corrections are as reflected in attached Appendix B.

⁴ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Dated at Washington DC

William N. Cates
Associate Chief Judge

13 This is my decision in Paper, Allied Industrial, Chemical
14 and Energy Workers International Union AFL-CIO (Georgia Pacific
15 Corporation), 15-CB-5097 herein International Union, and Paper,
16 Allied Industrial, Chemical and Energy Workers
17 AFL-CIO, Local Union Number 3-0950, case 15-CB-5140,
18 herein Local Union. And I shall refer to the Unions jointly as
19 the Unions.

20 The issues presented are whether, since on or about April
21 22, 2003 the Unions have refused to process a grievance
22 concerning seniority rights, which the Local Union filed on
23 behalf of Valda Barrineau, the Charging Party herein, under the
24 provisions of the collective bargaining agreement between the
25 Unions and Georgia Pacific Corporation, at its Pennington,
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1 Alabama location.

2 Further, if the Unions refused to process such a grievance,
3 did they do so because Barrineau is not a member of the Local
4 Union and/or to benefit the officers of the Local Union and/or to
5 avoid displacing members of the Local Union.

6 Further, if the Unions have refused to process such a
7 grievance for any or all of the reasons stated above, has the
8 Unions failed to represent Barrineau for reasons that are
9 unfair, arbitrary, invidious and thereby breach their duty of
10 fair representation owed to Barrineau and other employees of the
11 Unit.

12 It is acknowledged that if the Unions have breached
13 their duty as outlined above, such would violate Section
14 8(b)(1)(A) of the National Labor Relations Act, herein Act.

15 Upon the entire record, including my observation of the
16 demeanor of the witnesses, and after considering the closing
17 statements made by counsel for Government and counsel for the Unions, I
18 make the following:

19 Georgia Pacific Corporation is a corporation with an
20 office and place of business located in Pennington, Alabama
21 where it is engaged in the manufacture of paper products.
22 Annually, Georgia Pacific Corporation sells and ships goods
23 valued in excess of \$50,000 directly to points outside the State
24 of Alabama.

25 The parties admit the evidence establishes, and I find,

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1 that Georgia Pacific Corporation is an employer within the
2 meaning of Section 2(2)(6)(7) of the Act.

3 The evidence establishes, the parties admit and I find the
4 International and Local Unions are labor organizations within
5 the meaning of Section 2(5) of the Act.

6 Larry Funk is a representative for the International
7 Union, and certain Local Union officers are President Otho
8 Singley, Vice President Dana Hamilton, Recording Secretary Tom
9 Kirklewski, Trustee Scott Dees, Financial Secretary Byron Vice,
10 Vice President Lynda Edwards and Trustee Danny Bethany.

11 There is a collective bargaining agreement between the
12 Unions and Georgia Pacific Corporation covering an appropriate unit
13 of Office and Clerical employees pertinent to the case herein
14 at the Pennington, Alabama location of Georgia Pacific
15 Corporation.

16 For the greater part, the facts in this case were not
17 disputed. However, there are some matters that were disputed
18 and will require credibility resolutions. Let me state that, in
19 arriving at my credibility resolutions, I carefully observed the
20 witnesses as they testified and I have utilized such in arriving
21 at the facts upon which I rely herein.

22 I have also considered witnesses' testimony in relation to
23 other witnesses' testimony, and in light of the exhibits
24 presented herein, if there is any evidence that might seem to
25 contradict the credited facts I set forth, I have not ignored

1 such evidence, but rather have discredited or rejected it as not
2 reliable or trustworthy. I have considered the entire record,
3 including reviewing each of the exhibits, in arriving at the
4 facts herein.

5 Georgia Pacific Corporation has two plants at its
6 Pennington, Alabama location, both located in the same facility.
7 One of the plants is the tissue mill or plant and the other is
8 the board mill or plant. The tissue plant employs
9 approximately 92 production and maintenance employees, while the
10 board side plant employs approximately 130 to 140 production and
11 maintenance type employees.

12 The two plants operate with four shifts per day. Until
13 1999, the tissue plant had a clerk's job that performed, among
14 other duties, clerical or secretarial duties, as well as
15 preparing and filling out the manning schedule for all four
16 shifts at the tissue plant and posting it for the production and
17 maintenance employees. The manner in which the schedules are
18 filled out is set forth in the parties' collective bargaining
19 agreement to the extent necessary.

20 The administrative assistant for the board plant, among
21 other clerical and/or secretarial duties, filled out the work
22 schedules for the board plant production and maintenance
23 employees.

24 Georgia Pacific Human Resources Generalist, Rebecca
25 McKenzie, credibly testified the tissue plant clerical position

1 and the board plant administrative assistant position was
2 combined in 1999. McKenzie was a little more specific and
3 stated that the tissue plant clerical position was not
4 eliminated, but rather was combined with the board plant
5 administrative assistant position.

6 McKenzie further explained it was not unusual for jobs to be
7 combined and that job duties were constantly evolving as the
8 needs arose or as circumstances changed.

9 The central event, or one of the central events of this
10 case involves a Union meeting that was held on April 22, 2003, which
11 evolved into an executive board meeting. However, to get to
12 that meeting, there has to be certain background facts, other
13 grievances and meetings that took place prior to that time. I
14 have chosen to essentially outline the facts in chronological
15 order.

16 Twenty-five year Georgia Pacific Corporation employee,
17 Dana Hamilton, testified that approximately one week before she
18 was to be sworn in as vice president for the Local Union in the
19 office and clerical unit in early April 2003, she was notified
20 by another Local Union vice president, Billy Boykin, that her
21 pulp environmental assistant position was being eliminated.

22 Hamilton testified she had held the environmental
23 assistant position for a number of years, perhaps as many as
24 nine or ten. She testified her job duties were scheduling the
25 pulp mill production and maintenance employees and other

1 secretarial work, such as filings. According to Hamilton, her
2 job duties were not eliminated, but rather were given to other
3 employees.

4 Hamilton testified she felt her job was being eliminated
5 and her duties simply being parceled out to other employees
6 because she was about to be sworn in as vice president for the
7 Local Union.

8 Hamilton filed a grievance regarding her situation on
9 April 9, 2003. Hamilton's complaint, as stated in the written
10 grievance, was that she "was discriminated against and the
11 company did not go by the negotiated contract, parts of job
12 given to non-union employee, not offered job held by non-union
13 employee in same grade".

14 According to Human Resources Generalist McKenzie,
15 Hamilton's grievance was dormant until August 7, 2003. McKenzie
16 had no explanation from anyone why the grievance was dormant for
17 that period of time. The grievance was reviewed at that date,
18 according to McKenzie.

19 Hamilton's gripe was that her environmental job duties
20 were distributed elsewhere. Hamilton felt non-union employees
21 were favored over her. McKenzie testified Hamilton was told
22 non-paying employees were still in the bargaining unit.
23 McKenzie testified Hamilton was not discriminated against
24 because she was Local Union vice president.

25 Georgia Pacific Corporation denied Hamilton's grievance on

1 August 7, 2003 and on October 14, 2003, Local Union President
2 Singley dropped Hamilton's grievance.

3 Hamilton testified that when she was told her pulp
4 environmental assistant position was being eliminated, she was
5 asked to immediately decide what job or position she wanted to
6 bump into. Bumping is another term for displacement rights of
7 employees as spelled out in the parties' collective bargaining
8 agreement at Article 9, captioned "Layoff Rights".

9 The bumping or displacement rights outlined in the parties'
10 collective bargaining agreement in part states that, "When it is
11 necessary to eliminate or discontinue a job or to curtail an
12 operation, employees affected by the elimination, discontinuous,
13 or curtailment will be entitled to displace less senior
14 employees or any less senior employee in a job the displaced
15 employee previously held."

16 There are certain other terms or qualifications set forth
17 in the parties' collective bargaining agreement with regard to
18 displacement, but perhaps they're not pertinent herein.

19 Hamilton testified that she was told she had to make a
20 decision between one of three jobs that were open. One, the
21 board tissue administrative assistant position held by
22 Barrineau; two, a converting position held by an employee,
23 Cynthia Carter; or three, a board data recorder position that
24 was vacant.

25 Hamilton testified she objected to having to make a quick

1 decision and sought advice from International Union
2 Representative Funk, as well as communicating with Local Union
3 President Singley. Hamilton chose the board tissue
4 administrative assistant position occupied by the admitted less
5 senior employee Barrineau, the Charging Party herein.

6 Human Resources Generalist McKenzie testified Hamilton was
7 qualified for and eligible to seek bumping rights for either of
8 the three above-referenced positions.

9 Hamilton explained in her testimony about her
10 qualifications for the position consisted of being in payroll at
11 Georgia Pacific from 1979 until approximately 1981. Hamilton
12 testified she was converting assistant from 1981 until
13 approximately 1985 preparing work schedules and other duties, as
14 well as keeping up with employees' times worked.

15 Hamilton was in the tissue plant clerical, or
16 administrative assistant job as she called it, from 1985 until
17 1990. She scheduled production and maintenance employees for work in the
18 tissue plant, along with other secretarial duties, as well as
19 attending safety meetings. For approximately nine or so years,
20 Hamilton was the pulp environmental assistant with the duties
21 explained earlier.

22 Human Resources Generalist McKenzie testified she notified
23 Charging Party Barrineau that Hamilton would be bumping into
24 Barrineau's position of the board administrative assistant
25 position. According to McKenzie, Charging Party Barrineau did

1 not know why Hamilton would want to bump into her position.

2 Charging Party Barrineau testified she learned Hamilton
3 was going to bump her out of her job in approximately the second
4 week in April 2003. Barrineau testified she learned of the
5 matter both from Human Resources Generalist McKenzie and from
6 Hamilton.

7 According to Charging Party Barrineau, Hamilton called and
8 asked where she, Barrineau, would be going when she, Hamilton,
9 bumped her from the board administrative assistant position.
10 Charging Party Barrineau testified she immediately contacted
11 Local Union President Singley and told him Hamilton would not be
12 able to bump her because Hamilton had not previously worked the
13 administrative assistant job.

14 On April 16, 2003, Local Union President Singley filed a
15 grievance on Charging Party Barrineau's part. Singley filed the
16 grievance pursuant to Article 9, Page 9 of the parties'
17 collective bargaining agreement.

18 Local Union President Singley stated on the grievance form
19 "Dana Hamilton held a tissue mill job and it was deleted.
20 Approximately 10 percent toward this work (scheduling) was added
21 to the administrative assistant board. This was no combination
22 of jobs. Dana never did administrative assistant. Do not move
23 Valda Barrineau from her administrative assistant board job.
24 Also, the company want relation with union and workers, well,
25 why not delete one of the new positions that no one would move?"

1 Georgia Pacific Corporation gave its response on April 16,
2 2003 stating, "It was management's understanding that the Union
3 concurred that the employee being displaced (Hamilton) had
4 bumping rights to the position currently being held by the
5 grievant (Barrineau). However, in light of the Union's position
6 provided by this grievance, the company will reconsider the
7 bumping options available to the displaced employee and allow
8 the grievant (Barrineau) to remain in her position."

9 Georgia Pacific Human Relations Generalist McKenzie
10 testified Local Union President Singley telephoned her, or at
11 least spoke with her, stating that Barrineau was going to file a
12 grievance, that the tissue plant clerical position had been
13 eliminated back in 1999 and Barrineau should remain in the board
14 administrative assistant position.

15 McKenzie testified Georgia Pacific Corporation felt
16 Hamilton was qualified for the board administrative assistant
17 position, but Georgia Pacific Corporation was willing to work
18 with the Union on however they felt the position should be
19 filled. Simply stated, McKenzie testified Georgia Pacific
20 Corporation did not care whether Barrineau or Hamilton filled
21 the job. They simply wanted the job filled.

22 Georgia Pacific's decision, at the request of Local Union
23 President Singley, based on the grievance, was to allow
24 Barrineau to remain in the board administrative assistant
25 position and Hamilton would be reconsidered for bumping

1 privileges.

2 According to Hamilton, after she learned of the decision,
3 which she considered was unfavorable to her, she spoke with and
4 sought out assistance from International Union Representative
5 Funk.

6 Funk told Hamilton he could meet with her on April
7 22, 2003 because he would be at the Georgia Pacific Corporation
8 Pennington, Alabama location on that date for the purpose of
9 reviewing Georgia Pacific Corporation's proposed new attendance
10 policy.

11 Certain members of the executive board met on April 22,
12 2003. At the executive board meeting, or at least when it
13 developed into an executive board meeting of the Union,
14 International Union Representative Funk mentioned the
15 Hamilton/Barrineau situation.

16 Those present at the executive board meeting of April
17 22, 2003 were: International Union Representative Funk, Local
18 Union President Singley, Local Union Vice President Hamilton,
19 Local Union Recording Secretary Kirklewski, Local Union
20 Financial Secretary Vice, Local Union Trustee Bethany, Local
21 Union Vice President Edwards and Local Union Trustee Dees.

22 It is undisputed that the executive board meetings are
23 closed. That is, only executive board members may attend.
24 According to Local Union Trustee Danny Bethany, Hamilton
25 presented her side of the situation, pointing out that she had

1 held part of the current job that was under consideration on a
2 previous job.

3 Hamilton explained to the executive board that her
4 seniority was being threatened by the decision favoring
5 Barrineau, that her seniority was simply being taken away from
6 her. Hamilton explained that the combining of the tissue and
7 the board administrative assistant or clerical positions
8 qualified her for the board administrative assistant position,
9 and she would be denied her seniority rights if the position was
10 taken from her.

11 Local Union President Singley presented Barrineau's
12 position. Singley wanted the decision to allow Barrineau to
13 remain in the board administrative assistant position to stand.
14 The matter was discussed back and forth between those present
15 with a vote on the issue being called for.

16 According to Bethany, Kirklewski, Dees, Vice, Singley and
17 Hamilton, the vote to withdraw the grievance of Barrineau was
18 unanimous, or, at the very least, there was no opposition to it.

19 The decision to withdraw Barrineau's grievance, according to
20 Bethany and others was based strictly on the parties' collective
21 bargaining agreement language and employee's seniority rights.

22 Bethany testified that Local Union Vice President Edwards
23 voted to discontinue Barrineau's grievance. Kirklewski
24 testified specifically that Local Union Vice President Edwards
25 voted to discontinue the grievance of Barrineau.

1 I note that Local Union President Singley did not vote.
2 He explained he only voted in case of a tie. Hamilton did not
3 vote either.

4 Local Union President Singley testified Barrineau was
5 given every opportunity to explain her position to him, that he
6 felt her position was correct when he persuaded Georgia Pacific
7 Corporation to go along favorably with her grievance, and he
8 felt the same way at the executive board meeting on April 22,
9 2003, and still feels that way as of the trial herein.

10 However, he recognized the vote of the executive board and
11 withdrew Barrineau's grievance resulting in Hamilton filling the
12 board administrative assistant position.

13 Local Union Vice President Edwards testified she was in
14 attendance at the April 22, 2003 executive board meeting, and
15 agreed the others mentioned earlier were present. Edwards,
16 however, testified no vote was taken, either by a showing of
17 hands or by secret ballot.

18 Edwards testified Hamilton told her, in a one on one
19 discussion at the meeting, that Barrineau could not come to the
20 union hall because she was not a paying member of the Union.
21 According to Local Union Vice President Edwards, this comment
22 was not said with the other members of the executive board, and
23 she had not heard any other executive board members make such a
24 comment. Local Union Vice President Edwards testified she had
25 never heard any such comments made before the executive board

1 meeting.

2 Edwards said she thought Hamilton should have bumped the
3 least senior person in the bumping process, rather than just
4 anyone that Hamilton was senior to and could bump. Hamilton
5 testified that when asked why Barrineau was not at the executive
6 board meeting, she answered, she could not vote so there was no
7 need for her (Barrineau) to be there.

8 After carefully listening to the witnesses testify, and
9 observing them as they did so, I'm persuaded the overwhelming
10 credible evidence is that a vote was taken to withdraw the
11 Barrineau grievance at the April 22, 2003 meeting.

12 I do not credit Edwards testimony to the contrary. I do
13 so based on courtroom demeanor. Additionally, Edwards admitted
14 to being a long time personal friend of Barrineau and their
15 children had attended high school together. Edwards also held
16 strong views on how Hamilton should have exercised her bumping
17 rights. Perhaps these factors influenced Edwards' testimony.

18 To the extent that Local Union President Singley's
19 testimony might appear in some manner to some support Edwards'
20 testimony, I do not rely on that particular part of Singley's
21 testimony.

22 With those credibility resolutions made, I want to observe
23 that each witness testified, I'm persuaded, in what they
24 believed was a truthful manner. And where their testimony
25 conflicted with either overwhelming testimony to the contrary or

1 other reasons, I'm persuaded that it was faulty recall on their
2 part for reasons that even they may not be fully aware of.

3 Before I review the facts and guide myself by the legal
4 principles that would govern, or at least would help govern this
5 case, I feel it appropriate to state certain principles of law,
6 and I think these principles are very readily recognized by the
7 parties.

8 It is well settled that a Union which enjoys the status of
9 exclusive collective bargaining representative, as is the case
10 with the Unions herein, has an obligation to represent employees
11 fairly, in good faith, and without discrimination against any of
12 them on the basis of arbitrary, irrelevant or invidious
13 distinctions. *Vaca v. Sipes*, 386 U.S. 171 (1967).

14 A Union breaches this duty when it arbitrarily refuses to
15 process or ignores a meritorious grievance, or processes it in a
16 perfunctory fashion. Correspondingly, so long as a Union
17 exercises its discretion in good faith and with honesty of
18 purpose, a collective bargaining representative or
19 representatives is granted a wide range of reasonableness in the
20 performance of its representational duties toward the unit
21 employees.

22 For a Union's actions to be arbitrary, it must be shown
23 that, in the light of factual and legal landscape at the time of
24 the Union's action, the Union's behavior is so far outside a
25 wide range of reasonableness, as to be irrational. *Airline*

1 Pilots v O'Neill, 499 U.S. 65 at 67 (1991).

2 Mere negligence, poor judgment or ineptitude in grievance
3 handling are insufficient to establish a breach of a duty of
4 fair representation. Ford Motor Company v Huffman, 345 U.S. 330
5 (1953).

6 Again, however, there comes a point when a Union's action,
7 or its failure to take action, is so unreasonable as to be
8 arbitrary and thus contrary to its fiduciary obligations.

9 It is appropriate at this point to note for the record
10 precisely what it is the Government contends constituted the
11 alleged unfair labor practices of the Unions herein.

12 Specifically, it is alleged that the Unions, both the
13 International and the Local, refused to process a grievance
14 concerning seniority rights since on or about April 22, 2003,
15 which the Local Union had filed on behalf of Charging Party
16 Barrineau under the provisions of the collective bargaining
17 agreement covering the office and clerical employees herein.

18 It is alleged that both Unions did so, 1. because
19 Barrineau is not a member of the Local Union, 2. to benefit an
20 officer of the Local Union, and/or 3. to avoid displacing
21 members of the Local Union.

22 First, the Government would contend that there is evidence
23 of animus against non-union members or against non-paying union
24 members in the grievance that Hamilton filed with respect to the
25 elimination of her environment job. In that grievance, Hamilton

1 had expressed the view that her job was being taken from her and
2 given to non-union members or non-paying union members.

3 And if that was all that was involved in that grievance,
4 perhaps it would show what the General Counsel contends it would
5 show. However, Hamilton testified that she was pursuing the
6 grievance because her job was eliminated one week before she was
7 to be sworn in as vice president of the Local Union for the
8 office and clerical employees in a certain position with the
9 Union.

10 Hamilton testified she believed that was the motivation
11 for the elimination of her job, and therefore, when she was
12 speaking to the matter of her job being given to non-union
13 members, it was that her job was being eliminated and given to
14 non-union people in retaliation for her being selected as a vice
15 president of the Local Union.

16 I'm persuaded, viewed in that manner, as I believe is the
17 proper manner to view that grievance and Hamilton's conduct and
18 comments with relationship to that grievance, is that it was
19 done so, not in an effort to be against non-union members or
20 non-paying union members, but rather Hamilton was looking out
21 for her own personal interest.

22 And I think the evidence is somewhat overwhelming that
23 that was Hamilton's motivation throughout. That her big
24 motivation was not whether employees were union members or non-
25 paying union members or not, she testified her motivation, even

1 for joining the union or being associated with the union was
2 simply to have seniority rights. That was her sole purpose
3 in being in the union.

4 Well, I find no unlawful motivation with respect to
5 Hamilton's conduct as it relates to the April 22, 2003 action
6 that was taken regarding Charging Party Barrineau.

7 The next item that the Government would ask that I find a
8 motive that would constitute an unlawful motive on the part of
9 the Unions herein, is that it violated its own procedure when it
10 went into executive board session on April 22, 2003.

11 I did not cover that part in the factual narrative
12 description because the parties, that is the Unions, through
13 their counsel, admitted on the record that the Unions violated
14 their own procedure in not giving a 12 hour notice that the
15 executive board meeting was going to be held. The Unions simply
16 argue that they did not hold the meeting of the executive board
17 on April 22 in a manner that constituted unlawfulness on their
18 part regarding the National Labor Relations Act.

19 While the Unions violated their own procedure, I am
20 persuaded that such does not constitute an unfair labor practice
21 or invidious conduct on the part of the Unions, and I conclude
22 that, for a number of reasons that I will get into more fully
23 when I discuss what took place at the April 22, 2003 meeting.

24 Also, the Government would ask that I find animus
25 specifically in statements that the Government contends were

1 made at the April 22, 2003 meeting. The evidence that the
2 Government would ask that I consider to constitute the animus
3 or unlawfully motivated conduct on the part of the Unions
4 involves the statement that Local Union Vice President Edwards
5 gave that Hamilton said Barrineau could not be present at the
6 executive board meeting because she was not a paying union
7 member.

8 First off, I have difficulty in relying on Local Union
9 Vice President Edwards' testimony and I do so because Edwards,
10 it appears to me in the face of overwhelming evidence, was
11 unwilling to acknowledge that a vote was taken at the executive
12 board meeting. Notwithstanding the fact that most everyone else
13 present at the meeting and testifying indicated such a vote was
14 taken.

15 Hamilton testified that what she said was that Barrineau
16 could not vote and therefore had no reason to be present. I
17 credit Hamilton's version of the statement, but even if Hamilton
18 said to Edwards what Edwards says she did, even Edwards
19 acknowledges that it was simply between those two individuals
20 and that there was no indication that the other members of the
21 executive board knew of the comment of Hamilton to Edwards.

22 So I am unwilling to attribute any unlawful animus to the
23 Unions based on anything that may have been said at the
24 executive board meeting when the matter of the
25 Hamilton/Barrineau dispute was discussed.

1 Next, the Government would ask that I find that the
2 Unions were wrongfully motivated in that they withdrew from a
3 grievance that they had already won, that the grievance
4 presented to the company by Local Union President Singley back
5 on April 16, 2003 was decided in favor of the grievant, and the
6 matter had been put to rest.

7 A careful review of that argument is necessary. It is
8 apparent, that after Local Union President Singley obtained a
9 favorable ruling on the grievance involving Barrineau, that
10 Barrineau be permitted to remain in the position, Hamilton was
11 unhappy. Hamilton complained to International Representative
12 Funk, wanting to meet with Funk and perhaps Singley and others
13 to see what could be done because she believed her seniority
14 rights were being taken away from her.

15 International Representative Funk, knowing that he was
16 going to be in the Pennington, Alabama area on April 22, advised
17 Hamilton that perhaps the matter could be covered at that point.
18 Counsel for the General Counsel would argue that, among other
19 things, Hamilton was present to present her side of the story at
20 the April 22, 2003 meeting, but that Barrineau was not.

21 There's no question in my mind that Hamilton presented her
22 side of the story in a vigorous manner having observed her
23 testimony. I do not believe she's shy in expressing her views.
24 Now I feel she did so, perhaps, in an argumentative manner at
25 this meeting, even though she might contend it was a more peaceful

1 meeting.

2 I am just as convinced that Local Union President Singley
3 presented Barrineau's position in just as forceful a manner. I
4 base that on, among other things, Singley's testimony that he
5 was the president of the Local Union and, in essence, he was in
6 control of the Local Union here and now. As Alexander Haig once
7 said, that he was in control at the White House now.

8 Local Union President Singley said that, in response to
9 the question was he listened to, he said he certainly was
10 because he was the president of the Local Union and he didn't
11 take much disruption from anyone.

12 Local Union President Singley made a point of emphasizing
13 that he was of the belief and opinion that the position he
14 presented to the Georgia Pacific Corporation on April 16, 2003
15 was correct. He believed he was correct then, he believed he
16 was correct when he presented it to the executive board meeting on
17 April 22, and he still believes he's correct to this day.

18 So I'm fully persuaded that the merits of Barrineau's
19 position was presented aggressively by Local Union President
20 Singley at this meeting. Singley testified everything that he
21 needed to know to present Barrineau's case had been provided to
22 him by Barrineau. Barrineau herself acknowledged that she
23 simply wanted, had she been present, to say the same things that
24 she had said to Local Union President Singley.

25 Each of those present at the executive board meeting

1 testified that they made a decision with regard to withdrawing
2 the Barrineau grievance based on the contractual language as
3 well as the seniority rights of the employees. International
4 Union Representative Funk testified he even read provisions of
5 the collective bargaining agreement to the members present at
6 the executive board meeting, and that they examined it after he
7 had read the provisions to them.

8 International Representative Funk says that's all he
9 participated in at the meeting. I have some reservation about
10 that, but it's not necessary to the outcome of this case.

11 So I'm persuaded, based on the evidence that's been
12 presented in this case, that the April 22, 2003 meeting was
13 conducted and that a decision was arrived at to withdraw the
14 grievance of Barrineau and that the parties did so on the basis,
15 arguably, of the contractual provisions and seniority rights.

16 I'm not persuaded that anything that took place in the
17 meeting would constitute unlawfully motivated activity on the
18 part of the Unions.

19 The next question that must be addressed is, is there
20 animus displayed of an unlawful nature by the fact that the
21 Union withdrew a grievance it had already won? There's evidence
22 in the record that the Union has, in the past, withdrawn
23 grievances. In fact, Ms. Barrineau, the Charging Party herein,
24 had filed a grievance, I believe, concerning some weekend work
25 that she felt perhaps she should have been called in to perform. But

1 later she withdrew her earlier filed grievance.

2 So the withdrawing of grievances was not a new thing
3 involving the pertinent Unions herein. But I'm persuaded the
4 record did not present any evidence that a grievance that had
5 been won favorable to the grievant had been withdrawn in the
6 past. Therefore, does this establish that the Union had some
7 motivation that was unlawful, or that was addressing other than
8 the merits of the case, that is, the grievance? I'm persuaded
9 that no unlawful motivation can be attached to that for these
10 reasons.

11 The executive board, I have already concluded, reviewed
12 the situation involving Hamilton and Charging Party Barrineau
13 and after a review of it, under the contract and the grievance
14 procedure and under the seniority provisions, a majority
15 thereof, and perhaps unanimous of those voting, concluded that
16 the proper thing for them to do was to withdraw the grievance.

17 I don't have to conclude that this was a correct reading
18 of the contractual language to find that there is no unlawful
19 motivation by the Unions. Rather, it is an arguable
20 position that the executive board arrived at, after careful
21 consideration, that is after it had been vigorously presented
22 from both sides of the view, from the Hamilton viewpoint and
23 from the Barrineau viewpoint.

24 So I'm persuaded that you cannot attach any unlawfully
25 motivated significance to the withdrawing of a grievance that

1 had previously been found in favor of the grievant.

2 That the executive board vote may or may not have been
3 binding on Local Union President Singley, I'm persuaded he
4 recognized the validity of the weight of the vote and exercised
5 judgment accordingly.

6 Another reason that I do not attach any unlawful
7 motivation to the withdrawing of a grievance that had already
8 been found meritorious by the executive board is that the
9 Barrineau grievance, or any other grievance, could never make it
10 to arbitration without a majority vote of the membership.

11 In this case, you have just the opposite, you have the
12 undoing of a grievance that had already been decided in favor of
13 the grievant, but, here again, if the vote is unanimous in the
14 executive board, if the matter had been pursued on to the full
15 membership, one could arguably assume that the full membership
16 would perhaps follow the leadership of the executive board.

17 So I don't find any unlawful motivation in that. I'm
18 persuaded, as argued by Union Counsel, the mere fact that a
19 Union would change its mind or its position, standing alone does
20 not constitute unlawful motivation. It merely reflects that, if
21 the Union perceived it had made a decision not in the best
22 interest of its membership based on contract provisions and
23 seniority requirements, that it would be within its discretion
24 to withdraw a grievance even though it had been previously
25 settled favorable to the grievant.

1 So, in summary, I find that the Government has failed to
2 establish that either of the Unions discriminated against
3 Barrineau. Or, stated differently, I
4 find the Government has not proven by preponderance of the
5 evidence that the Unions refuse to process a grievance
6 concerning seniority rights that was filed on behalf of
7 Barrineau because Barrineau was not a member of the Local or to
8 benefit an officer of the Local, or to avoid displacing members
9 of the Local.

10 I think, so concluded, I shall recommend that the
11 complaint be dismissed in its entirety.

12 In approximately ten days from today, the court reporter
13 will provide me, and the parties that requested, a copy of the
14 transcript of this proceeding. When I receive a copy of that
15 transcript, I will take those pages of the transcript that
16 constitute my decision and, where appropriate, make corrections
17 thereon, and certify that to the Board and to the parties as my
18 decision.

19 It is my understanding that the appeal period runs from my
20 certification of the decision. However, the Board has outlined
21 what the procedures are in its rules and regulations, and you
22 would be best advised to follow their rules and regulations in
23 taking any exceptions to this decision.

24 And, I thank the parties for their participation and it's
25 been a pleasure being in Butler, Alabama.

1 I would urge the parties to still see if they can't come
2 to some accord that's satisfactory to everybody in this
3 situation because I have decided all that is before me, but it
4 is my strong belief that there's more that perhaps the parties
5 ought or need to settle that is still out there.

6 With that, this record is closed.

7 (Whereupon, at 9:55 a.m., the hearing was concluded.)

"APPENDIX B"

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Page(s)	Line(s)	Delete	Insert
247	1-12	Entire lines 1-12	
247	16		International
247	17		Union
247	25	in	and
248	2	refuse	refused
248	4	officer	Officers
248	11	Union	Unit
248	14	(a)	(A)
248	17		"statements" before "made"
249	12		"an" before "appropriate"
250	8	employees	employs
251	6	usual	Unusual
251	8	change	Changed
251	10		"Union" after "a"
252	1	a	as
253	9		"in" after "outlined"
254	17		"employees" before "for"
256	13		"in" before "the"
257	5	Funk told Hamilton he could not meet with her on April	
257	6	correction --	
257	16	president	present
260	6	not	no
260	14	her	
261	9	representatives	representative
264	2	that	
264	7	we draw	I find
264	17	its	their
264	24	we	I
265	2	we	I
265	4	involve	involves
265	15	the	that
266	1	we	I
266	10		"in" before "the"
267	2	"a" after "just"	as
267	9	and	
267	16		"it" before "to"
268	9		"at" before "the"
268	15	on	of

"APPENDIX B"

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Page(s)	Line(s)	Delete	Insert
269	19	against	by
271	2	"the" after "against"	
271	3	seniority grievance of	